IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 787 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHENDRA ALIAS MASTER PARSHOTTAMDAS DESAI

Appearance:

MS KATHABEN GAJJAR ADDL. PUBLIC PROSECUTOR for Petitioner

RESPONDENTS ABSENT THOUGH DULY SERVED4

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: /03/2000

C.A.V. JUDGEMENT

#. This is an appeal under Section 378(1) of Criminal Procedure Code (Cr.P.C. in short) filed by the State Government challenging an order of acquittal passed by the learned J.M.F.C., Nadidad by rendering his judgment

dated 16-5-1992 in Criminal Case No. 1510 of 1992 pending on his file.

The respondents were accused in aforesaid Criminal Case No. 1510 of 1992 in which said judgment was rendered by the learned J.M.F.C., Nadiad.

#. The facts leading to this present appeal in a nut-shell are as follows:-

As per complaint (Exh. 10) complainant Shri B.J. Shahi, Police Inspector, Nadiad Town Police Station received an information from informant that one Ramesh Chandubhai Shah (Respondent No.2) had placed bottles of Indian made foreign liquor in house of one Mahendrakumar Parsottamdas Desai (Respondent No.1) situated in Radhakrishna Society, Near Petlad Railway Crossing, Nadiad and that said bottles of liquor were brought by transporting in truck No. GJ-7-5318.

On receiving such information, said complainant Shri Shahi called two panch witnesses and in company of other police officers, he left Police Station for Radhakrishna Society. He found that one motor truck was parked near one bungalow situated in Radhakrishna Society and 4 to 5 persons were unloading the boxes and were placing that boxes in one bungalow. On making raid in presence of panch witnesses, one person was caught hold there and there and other persons ran away from that place. It is the case of the prosecution that that person who was caught hold was Mahendrakumar alias Master Parsottamdas Desai, (Respondent No.1). Thereafter in presence of Respondent No.1 truck was searched and it was found that bottles of liquor were placed beneath the bags of white powder. There were different brands of bottles of liquor in that boxes. It is further the case of the prosecution that in all 8192 bottles were found from that boxes which were seized under panchnama. It is further the case of the prosecution that price of that 8192 bottles of liquor can be estimated at Rs.3,04,950/- were seized. The truck was also seized under Panchanama. Along with the Muddamal articles, 130 bags of powder were also seized. It is the further case of the prosecution that complainant asked Mahendrakumar (Respondent No.1) to produce pass or permit to possess that liquor. All that articles were seized under panchnama and thereafter complainant lodged his complaint in Nadiad Police Station which came to be registered for offences punishable under Sections 66(1)(b), 65-A, 65-E, 81, 83, 116-B of the Bombay Prohibition Act as C.R. No. Pro. 2689 of 1991. Thereafter, police investigation was started and

ultimately the Investigating Officer filed a charge sheet against present four respondents in the Court of the Ld.
J.M.F.C., Nadiad on or about 5-3-1992. That charge sheet came to be registered as Criminal Case No. 1510 of 1992.

On or about 13-5-1992, the learned J.M.F.C. recorded plea of the accused at Exh.5. Accused pleaded not guilty to the charge and therefore prosecution examined three witnesses and closed their evidence. After recording further statement under Section 313 of Cr.P.C. and after hearing the learned advocates for both the parties, the learned J.M.F.C., Nadiad came to a conclusion that prosecution has not proved the case beyond reasonable doubt against the accused and therefore by rendering his judgment on 16-5-1992 below Exh. 5 acquitted all the accused. For muddamal the learned Magistrate ordered to confiscate the muddamal articles No. 1 to 32 and for article No. 33 he ordered that that article be allowed to be continued to remain in possession of the accused to whom it is handed over. As against that judgment by which accused were acquitted the State Government has preferred this present appeal.

#. Learned A.P.P. has taken me through the evidence recorded by the learned Magistrate in Criminal Case No. 1510 of 1992. She has argued that looking to judgment it appears that panch witnesses have supported the case of the prosecution and that evidence of panch witnesses gives corroboration to an evidence of complainant. She has further argued that looking to that judgment the learned Magistrate has acquitted the accused only on the ground that complainant did not make any attempt to collect the evidence of independent witnesses though it was available to him. She has further argued that had the complainant tried to collect that evidence of independent witnesses he could not have produced that evidence before the Court and thus the learned Magistrate has come to the conclusion that case against the accused is not proved beyond reasonable doubt and therefore accused have been acquitted. She has further argued that looking to the judgment the learned Magistrate ought to have held that case is proved against the accused and he ought to have convicted the accused for said offences.

#. At the direction given by this Court, learned A.P.P. read the oral evidence of the witnesses as well as documentary evidence produced in the case.

#. P.W. 1 Manubhai Kalidas Shah (exh. 6) is a panch witness of panchnama (exh. 7) under which muddamal

articles were seized. On reading that evidence of Manubhai Kalidas Shah, it is found that he has not supported the case of the prosecution. He has deposed that on 10-10-1991 at about 10.00 to 11.00 p.m. (night) he was called at Dumral police chowky and he signed ready panchnama and except this he knows nothing. It appears that the learned A.P.P. before the trial court produced a copy of panchnama and signature of this panch witness was only exhibited as Exh. 7. This witness was declared as a hostile witness. He was cross examined by the ld. A.P.P. before the trial court, but no substantial material has come out in cross-examination. Thus this witness has not proved the contents of the panchnama below which his only signature Exh. 7 is proved.

#. Another panch witness Ramesh Piraji Marwadi was also examined at Exh. 8. He has deposed that on 10-10-1991 at about 9.00 to 9.30 p.m. (night) he was called at Dumral Police Chowky and his signature was taken in one written paper. He was shown copy of panchnama below which signature (Exh. 7) of first panch witness was proved. This witness has also not supported the case of the prosecution. He was declared as hostile witness. He was cross-examined by the learned A.P.P. before the trial court. Thus both panch witnesses have not supported the case of the prosecution. Contents of panchnama are not proved.

#. The prosecution has examined the complainant Shri Bhimbhahadur Jungbahadur Shahi (Exh. 9). As per his evidence he and other police officers were present in Dumral Police Chowky and one informant gave an information that there is foreign make liquor in one truck No. GJ 7 5318 which is parked just near Petlad Railway Crossing and from that truck that foreign make liquor is being unloaded and stored in house of one Mahendrabhai Master. He has further deposed that on receiving that information, he called the panch witnesses and by keeping them with him, he raided Radhakrishna Society. He found that one truck No. GJ 7 5318 was there in a parked stationary condition and on seeing police, persons who were engaged for work of unloading the bottles ran away. Only one accused Mahendrabhai (Respondent No.1) was caught hold there and there. Thereafter, truck was searched and it was found that there were boxes of foreign make liquor concealed below the bags of white cement. Thereafter house of Mahendrabhai Master was searched and it was found that ten boxes were also there in his house. As per case of prosecution in all 8192 bottles total worth Rs.3,04,950/were seized. The truck was also seized.

Accused Mahendrabhai Master (Respondent No.1) was arrested. He also recorded the statements of witnesses and thereafter he lodged the complaint.

In cross-examination this complainant has admitted that truck was parked on road and there were other housing societies nearby Radhakrishna Society. He has also admitted that he tried to record the statements of the persons residing nearby that Society but that persons are not cited as witnesses in the charge sheet. He has also admitted that he has enquired about the ownership of the house which he had searched, but he has not produced any documentary evidence. He has admitted that he did not enquire from Nadiad Municipality as to in whose name that house is registered. From this evidence, it cannot be said that case against the accused is proved beyond reasonable doubt. In this type of cases, prosecution is expected to prove the conscious possession of the prohibited articles like liquor. Admittedly most of the boxes of bottles of liquor were found from truck and only ten boxes were found from the house of accused No.1 as alleged by the prosecution. Under the circumstances, it was the duty of the prosecution to collect the evidence with regard to ownership of the truck from which the boxes of bottles of liquor were found in presence of panch witnesses. Complainant has not made any attempt to collect a documentary evidence from R.T.O. office though it was available. Had he attempted to collect that evidence he could have certainly proved that this truck was registered in the name of particular accused. In absence of such evidence it cannot be inferred that the truck was of ownership of respondent No.1. It may be noted that only respondent No.1 was caught hold at the place and other persons had run away. They were arrested later on. In the same manner, the Investigating Officer ought to have collected an evidence from Nadiad Municipality on the point as to who is the owner of that house from which ten boxes of bottles of liquor were seized.

#. Under the circumstances an evidence of the complainant is very much shaky and incomplete. It is true that police witness can be relied on even if panch witnesses are turned hostile, provided his evidence is acceptable and trustworthy. Here in this case the prosecution has not proved the case by leading cogent evidence to establish that muddamal articles of boxes of liquor bottles were found from conscious physical possession of accused. Prosecution has not led any evidence to prove the nexus between the truck and the accused and also nexus between the house and the accused

No.1 and therefore evidence of complainant is not trustworthy. In view of above, the learned Magistrate has rightly observed in his judgment that prosecution could have collected independent evidence and as that type of evidence is not led the case of the complainant is not proved and therefore looking to an evidence led by the prosecution this Court finds that there is nothing otherwise to disturb the finding of the learned Magistrate. The learned Magistrate has given plausible reasons in his judgment for acquitting the accused and when plausible reasons are given by the trial court then High Court will not interfere if that judgment of acquittal is based on reasoned orders.

#. In the circumstances this appeal deserves to be dismissed and accordingly it is dismissed by confirming the acquittal order dated 16-5-1992 in Criminal Case No. 1510 of 1992 pending on the file of learned J.M.F.C., Nadidad.

(H.H. Mehta, J)